

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

IN RE: NATIONAL PRESCRIPTION
OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

Track 12: *City of Rochester v. Purdue
Pharma, L.P.*, No. 1:19-op-45853

Track 22: *City of Ogdensburg v. Purdue
Pharma, L.P.*, No 1:19-op-45852

MDL No. 2804

Case No. 1:17-md-02804-DAP

Judge Dan Aaron Polster

PBM DEFENDANTS' MOTION FOR LEAVE TO FILE SUR-REPLY

On February 5, 2025, the PEC filed a motion for leave to serve supplemental discovery on the PBM Defendants. Dkt. 5938. The Court initially gave the PBMs three business to respond (*see* February 6 text-only order) but ultimately allowed the PBMs until February 18 to respond (*see* February 14 text-only order). The PBMs filed their oppositions on February 18. Dkt. 5948; Dkt. 5955. On February 25, the PEC filed a reply brief to each. Dkt. 5979; Dkt. 5980.

The PEC's reply briefs raise several new arguments in support of its motion and attach several new exhibits—12 to its OptumRx reply and 5 to its Express Scripts reply. Fundamental fairness requires that the PBMs have an opportunity to respond to the new arguments and exhibits raised for the first time in the PEC's reply briefs.

Accordingly, the PBMs request that the Court grant them leave to file short sur-replies of up to five pages each by March 3. In the alternative, the PBMs request that the Court disregard the new arguments and exhibits submitted by the PEC for the first time in its reply briefs. *See* ECF No. 3102 at 4 n.2 (declining to “address arguments raised for the first time in a reply brief”); *Travelers Prop. Cas. Co. of Am. v. Hillerich & Bradsby Co.*, 598 F.3d 257, 275 (6th Cir. 2010)

(“Arguments raised only in reply, and not in the original pleadings, are not properly raised before the district court[.]”).

Respectfully submitted this 26th day of February, 2025.

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